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Letter dated 30 May 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 9 April 2003 (S/2003/428).

The Counter-Terrorism Committee has received the attached third report from Bulgaria submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 27 May 2003 from the Permanent Mission of Bulgaria to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of the Republic of Bulgaria to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) and has the honour to transmit, enclosed herewith, a further supplementary report (see enclosure) in compliance with paragraph 6 of resolution 1373 (2001) on the steps taken to implement that resolution. The report is submitted in response to the questions and comments of the Counter-Terrorism Committee, contained in its letter S/AC.40/2002/MS/OC.208 dated 24 February 2003.

Enclosure

Second supplementary report

to the National Report on the Activities of the Republic of Bulgaria to Counteract Terrorism in implementation of Resolution 1373 (2001) of the UN Security Council on measures that the UN Member States need to take in the fight against terrorism

On 5 July 2002 Bulgaria submitted its supplementary report in compliance with § 6 of UNSC Resolution 1373 (2001). In a letter dated 24 February 2003, the CTC informed Bulgaria that it had given careful consideration to the supplementary report and put forward some further questions and comments on the implementation of Resolution 1373. In the following second supplementary report the Government of Bulgaria seeks to provide answers to those questions and comments.

1. Implementation measures

1.2. Please provide a progress report of the enactment of the draft laws on Measures against Financing of Terrorism and the amendments to the Criminal Code dealing with terrorism. The CTC would appreciate receiving copies of the relevant provisions, in particular those dealing with terrorist offences, the suppression of the financing of terrorism and of other acts preparatory to the commission of terrorist offences, the procedure for the freezing of funds and the amendments to the Money Laundering Law that extend the scope of that law (including the reporting obligation) to the financing of terrorism. Will the provisions regarding the freezing of funds include the possibility of freezing funds in Bulgaria at the request of another country? If not, how does Bulgaria deal, or propose to deal, with this?

On 5 February 2003 the National Assembly adopted the Law on the Measures against Financing of Terrorism (LMAFT, promulgated in the *State Gazette*, No. 16 of 18 February 2003, amended *State Gazette*, No. 31/2003), which entered into force on 21 February 2003. The Law was drafted in compliance with the measures under Resolution 1373 (2001) of the UN Security Council and taking into account the provisions of the Council's Regulations (EC) No. 2580/2001 of 27 December 2001 on the specific restrictive measures in the fight against terrorism, aimed against certain natural or legal persons. The LMAFT defines the measures against financing of terrorism, the organization and the control on their enforcement, and the administrative sanctions for their violation.

The LMAFT provides for two types of measures against the financing of terrorism: freezing of funds, financial assets and other property, whereby that freezing has the effect of distraint or attachment or ban on providing financial services, funds, financial assets or other property. These measures are applied with respect to natural and legal persons, groups and organizations included in a special list. Under the provisions of Article 5, paragraph 1 of the LMAFT, the list is adopted, supplemented and amended subject to a decision of the Council of Ministers on the proposal by the Minister of the Interior or by the Prosecutor General. Article 5, paragraph 2 of the LMAFT lists exhaustively the subjects to be included in the list. These are:

a) natural and legal persons, groups and organizations identified by the UN Security Council as being connected with terrorism or with respect to which sanctions for terrorism have been imposed with an UNSC Resolution.

b) persons against whom criminal proceedings have been instituted for terrorism, financing of terrorism, forming, leading of or membership in an organized criminal

group that has set itself the aim to perpetrate acts of terrorism or financing of terrorism, preparations for committing terrorism, open incitement of other persons to commit acts of terrorism or a threat to commit acts of terrorism as defined in the Penal Code.

c) persons identified by the competent authorities of another state or the European Union.

On 13 September 2002, the National Assembly adopted the Law on the Amendments to the Penal Code, which contains special criminal provisions on terrorism (Article 108a, paragraph 1) and on financing of terrorism (Article 108a, paragraph 2); criminal liability for forming, leading or participating in a terrorist group (Article 109), preparations for committing acts of terrorism (Article 110), open incitement to commit acts of terrorism (Article 320, paragraph 2) and the threat to commit acts of terrorism; expropriation of funds for financing of terrorism (Article 108a, paragraph 3), as well as confiscation of the entire property or a part thereof of the perpetrators of terrorist offences and of the persons financing their activities (Article 114, paragraph 2).

The Penal Procedure Code in its section on Legal Assistance on Criminal Cases (Articles 461-466) indicates specifically the seizure and delivery of the objects with which the offence has been perpetrated or of the property acquired through offence as actions within the framework of the legal assistance that can be provided to another state under the provisions of an international treaty or on the principle of reciprocity (Article 461).

A Law on the amendments to the Law on the Measures against Money Laundering has been passed, promulgated in the *State Gazette*, No. 31 of 4 April 2003. The Law provides:

a) Broadening of the list of persons under obligation to report, namely:

- Free-lance persons, e.g., lawyers (attorneys);
- Intermediaries in deals with real estate;
- Persons organizing unofficial securities markets;
- Persons who provide on a professional bases consultations in the sphere of taxation;
- Persons who on a professional bases conduct transactions with objects of a high value, such as precious metals, precious stones, works of art, cultural heritage items;
- Persons organizing auctions for such items or works when the payment has been made in cash and the value exceeds BGN 30,000 or the equivalent amount in another currency.

b) An obligation is created for the state bodies exercising general supervision over the activities of the persons under obligation to report to provide information to the Financial Intelligence Agency in the event that while exercising supervision they discover operations or transactions connected with suspected money laundering. Parallel with the existing regime of reporting suspicious transactions, requirements of reporting transactions in cash are planned. The latter requirements are auxiliary and are aimed at creating a database: the reported operations are subject to registration only. The information in the registers is to be used only when and if a report about a suspicious operation or transaction has been received.

1.3. Effective implementation of paragraph 1 of the Resolution requires States to have an appropriate monitoring mechanism to ensure that funds and other economic resources collected by non-profit organizations (e.g. religious, charitable or cultural organizations) are not diverted for other than the stated purposes, particularly for financing of terrorism. Please comment on what action Bulgaria

proposes to take in this regard, as the reporting obligation for non-profit organizations mentioned in the report does not appear to meet this requirement adequately.

The aim pursued by the Law on the Measures against Financing of Terrorism, as defined in Article 2, is the prevention and disclosure of the actions of natural persons, legal persons, groups and organizations aimed at financing of terrorism. The measures under this Law, including the notification of the Minister of the Interior and the Minister of Finance, are mandatory for all persons, including non-profit legal entities. In addition, under Article 9, paragraph 3 of the Law on the Measures against Financing of Terrorism, the persons under Article 3, paragraphs 2 and 3 of the Law on the Measures against Money Laundering (and legal entities are explicitly specified in the list of the persons under legal obligation pursuant to Article 3, paragraph 2, item 17 of the Law on the Measures against Money Laundering) are under obligation, in the event of suspected financing of terrorism, to inform the Financial Intelligence Agency (in addition to the Minister of the Interior).

Furthermore, it should be pointed out that the Law on Non-Profit Legal Entities provides that on demand by the Prosecution, the respective District Court terminates the legal entity when it has engaged in activities that contravene the law or public order or morality (Article 13 of the Law). Moreover, the Law on Non-Profit Legal Entities defines the aims for which the property of non-profit legal entities is to be spent for public-benefit activities (Article 38). These legal entities are under obligation to keep books with the minutes of the meetings of the collective bodies and to prepare annual reports on their activities, containing data on the funds spent, their connection with the aims and the program of the organization (Article 40). A central register for non-profit legal entities for engaging in public-benefit activities has been established with the Ministry of Justice (Article 45). Annual (Article 46) and current control (Article 47) on these persons is provided, whereby they are under obligation to provide every year information about their activities, including about the purposes for which the property has been spent, as well as a certified balance sheet or audit by a certified auditor (Article 26). In the event that violations of the law are found, the Minister of Justice notifies the prosecution and state financial control bodies with a view to conducting inspections and audits and taking the measures provided under the Law (Article 46, paragraph 3).

1.4. Please, confirm that the existing or proposed provisions in the Criminal Code criminalize the use of Bulgarian territory by anybody for the purpose of:
• committing a terrorist act against another State or its citizens; or
• financing, planning and facilitating terrorist acts against other States or their citizens, even if no related terrorist acts have actually been committed or attempted.

Under the provisions of Article 356b of the Penal Code, which was in force even prior to the amendments adopted in 2002, a foreign national who on the territory of the Republic of Bulgaria plans to commit abroad the respective offences involving a threat to the general public (that can be terrorist acts as well – cf. Article 356a) is liable to imprisonment of up to five years. If an organization or group has been formed for the same purpose, the punishment is imprisonment for one to six years, and for the organizers and leaders – three to eight years (Article 356b, paragraph 2). The criminal liability under these provisions does not require the respective offences involving a

threat to the general public to have been committed or their perpetration to have been attempted.

1.5. Please explain whether, in order to fulfill the requirements of sub-paragraph 2 (e), it is possible under Bulgarian law to prosecute or extradite a foreign national who is found in Bulgaria and is alleged to have committed a terrorist act outside Bulgaria against another State or its citizens.

Under the Bulgarian legislation, a foreign national found on the territory of Bulgaria, who has committed an offence abroad, affecting the interests of another State or of a foreign national, may be extradited (because under Article 439a of the Code of Criminal Procedure, terrorist acts are offences for which extradition may be allowed) or that person may be under criminal liability before the Bulgarian authorities. In connection with the latter, it is necessary to point out that pursuant to Article 6, paragraph 2 of the Penal Code, when extradition is denied for some reason concerning a foreign national who is located on the territory of Bulgaria and who has committed abroad an offence affecting the interests of another state or of a foreign national, the competent Bulgarian authorities should exercise criminal jurisdiction and accordingly to institute criminal proceedings against the foreign national, when this is provided in an international agreement to which the Republic of Bulgaria is a party (e.g., pursuant to Articles 6 and 7 of the European Convention on Combating Terrorism).

1.6. The CTC is aware that Bulgaria may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of Bulgaria's response to these matters as well as details of any efforts to implement international best practice, codes and standards which are relevant to the implementation of resolution 1373.

The Bulgarian Government is pleased to provide the CTC with the translation of the Law on Measures against Financing of Terrorism, an extract of the Penal Code with amendments concerning terrorist offences and the answers to the Terrorist Financing Questionnaire for EGMONT Financial Intelligence Units.

ANNEXES:*

1. Law on the Measures against Financing of Terrorism;
2. Extract of the Penal Code;
3. Terrorist financing Questionnaire for EGMONT FIUs.

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* The annexes are on file with the Secretariat and are available for consultation.